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Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996
Fifteenth session
11-15 April 2011

Draft report

Rapporteur: Mr. Petr **Válek** (Czech Republic)

I. Introduction

1. The fifteenth session of the Ad Hoc Committee established by the General Assembly in its resolution 51/210 of 17 December 1996 was convened in accordance with paragraph 24 of General Assembly resolution 65/34. The Committee met at Headquarters from 11 to 15 April 2011.

2. In accordance with paragraph 9 of General Assembly resolution 51/210, the Ad Hoc Committee was open to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency.

3. At its 47th meeting, on 11 April 2011, the Committee decided, on the basis of past practice, that members of the Bureau of the Committee at the previous session, to the extent of their availability, would continue to serve in their respective capacities. The Committee elected Mr. Dire David Tladi (South Africa) as Vice-Chair and Mr. Petr Válek (Czech Republic) as Rapporteur, to replace, respectively, Ms. Namira Nabil Negm (Egypt) and Mr. Andi Xhoi (Albania), who were no longer available to serve in those capacities. The Committee expressed appreciation for the valuable contributions of Ms. Negm and Mr. Xhoi to its work. The Bureau was thus constituted as follows:

Chair:

Rohan Perera (Sri Lanka)

Vice-Chairs:

Maria Telalian (Greece)

Ana Cristina Rodriguez-Pineda (Guatemala)

Dire David Tladi (South Africa)

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Rapporteur:

Petr Válek (Czech Republic)

4. Václav Mikulka, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Ad Hoc Committee, assisted by George Korontzis as Deputy Secretary. The Codification Division of the Office of Legal Affairs provided the substantive servicing for the Committee.

5. Also at the 47th meeting, the Ad Hoc Committee adopted the following agenda (A/AC.252/L.20):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Consideration of the questions contained in the mandate of the Ad Hoc Committee as set out in paragraph 23 of General Assembly resolution 65/34.
6. Adoption of the report.

6. The Ad Hoc Committee had before it the report on its fourteenth session as well as the report of the Working Group of the Sixth Committee of the sixty-fifth session of the General Assembly, the latter containing texts of the preamble and articles 1 and 2 and 4 to 27 of the draft comprehensive convention, prepared by the Friends of the Chair incorporating the various texts contained in annexes I, II and III to the report of the Ad Hoc Committee established by General Assembly resolution 51/210 at its sixth session,[1] for discussion, taking into account developments in recent years; and a list of written proposals in relation to the outstanding issues surrounding the draft comprehensive convention.[2] It also had before it two letters of 2005 from the Permanent Representative of Egypt to the United Nations concerning the convening of a high-level special session of the General Assembly on cooperation against terrorism.[3]

II. Proceedings

7. The Ad Hoc Committee held two plenary meetings: the 47th on 11 April and the 48th on 15 April 2011.

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[1] A/57/37.

[2] A/65/37 and A/C.6/65/L.10. See also the reports of the Ad Hoc Committee on its sixth to thirteenth sessions (A/57/37 and Corr.1; A/58/37; A/59/37; A/60/37; A/61/37; A/62/37; A/63/37; and A/64/37). See also the reports of the Working Group established at the fifty-fifth to sixtieth sessions of the General Assembly (A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9, A/C.6/58/L.10, A/C.6/59/L.10 and A/C.6/60/L.6). The summaries of the oral reports of the Chairman of the Working Group established at the sixty-first, sixty-second, sixty-third and sixty-fourth sessions are contained in documents A/C.6/61/SR.21, A/C.6/62/SR.16, A/C.6/63/SR.14 and A/C.6/64/SR.14.

[3] Letters dated 1 and 30 September 2005 from the Permanent Representative of Egypt to the United Nations addressed to the Secretary-General and to the Chairman of the Sixth Committee, respectively (A/60/329 and A/C.6/60/2).

8. At the 47th meeting, on 11 April, the Ad Hoc Committee adopted its programme of work and decided to proceed with its discussions in informal consultations and informal contacts. During the informal consultations on 11 and 12 April, the Committee held a general exchange of views on the draft comprehensive convention on international terrorism and on the question of convening a high-level conference. Further informal consultations regarding the draft comprehensive convention were held on 12 April and informal contacts were held on 12 and 13 April. An informal summary of those discussions, prepared by the Chair, appears in annex I (sect. A and B) to the present report. The informal summary is intended for reference purposes only and not as a record of the discussions.

9. At the 48th meeting, on 15 April, the Coordinator of the draft convention, Maria Telalian (Greece), made a statement briefing delegations on the informal contacts held during the current session. A summary of that report, for reference purposes only and not as a record of discussions, appears in annex II to the present report.

10. The informal consultations concerning the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations were held on 12 April. An informal summary of those discussions, prepared by the Chair, appears in annex I (sect. C) to the present report. The informal summary is intended for reference purposes only and not as a record of the discussions.

11. At the 48th meeting, on 15 April, the Ad Hoc Committee adopted the report on its fifteenth session.

III. Recommendation

[text to be inserted]

Annex I

Informal summary prepared by the Chair on the exchange of views during the informal consultations

A. General

1. During the general exchange of views during the informal consultations on 11 and 12 April 2011, delegations, some drawing attention to particular incidents, unequivocally condemned all terrorist acts, regardless of their motivation, as criminal and unjustifiable, wherever, whenever and by whomsoever committed. It was stressed that terrorism posed a threat to international peace and security, endangered the territorial integrity and stability of States and threatened the full enjoyment of human rights, and it was also emphasized that all measures taken to combat terrorism must be in conformity with international law, in particular the Charter of the United Nations, human rights law, international humanitarian law and refugee law, and that measures countering terrorism should also respect the rule of law. It was pointed out that terrorism should not be associated with any religion, culture, nationality, race, civilization or ethnic group, and that those attributions should not be employed as a justification for the commission of terrorist acts or the adoption of counter-terrorism measures.

2. Some delegations emphasized that terrorism should not be equated with the legitimate struggle of peoples under colonial or alien domination and foreign occupation for national liberation and self-determination. In that regard, reference was made to General Assembly resolution 46/51 and to other relevant United Nations resolutions. Delegations recalled particular examples, considered as constituting State terrorism, which some viewed as one of the most horrendous forms of terrorism. Some delegations also expressed concern over the application of what they referred to as double standards in combating terrorism, particularly in actions taken, including in the prosecution or extradition of alleged offenders of terrorist acts. In addition, attention was drawn to the challenges and dilemmas posed by the phenomenon of suicide bombings.

3. It was emphasized that terrorism was a multifaceted phenomenon, requiring multidimensional and coordinated approaches, as well as comprehensive counter-terrorism strategies. In this regard, delegations expressed their support for the United Nations Global Counter-Terrorism Strategy and called for its full realization and transparent implementation by Member States, with some delegations drawing particular attention to pillars 1 and 4, stressing the need for a balanced implementation of the Strategy's four pillars. The review of the Strategy was welcomed by some delegations. Some delegations also expressed their support for the Counter-Terrorism Implementation Task Force and welcomed its institutionalization, stressing the need for it to be adequately resourced.

4. Delegations underlined the central role of the United Nations as the most appropriate framework for the coordination of global counter-terrorism efforts as well as the crucial role played by it system-wide. Delegations also emphasized the importance of full implementation of international counter-terrorism instruments, while drawing attention to the recommendations of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil, in 2010. They called upon States that had not yet done so to consider becoming parties

to these instruments. Outlining a range of measures taken at various levels, some delegations highlighted the importance of assistance to States in capacity-building and information-sharing in the field of combating terrorism. In this regard, delegations commended the assistance being provided to States by the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, as well as the research, studies and other activities carried out by the United Nations Interregional Crime and Justice Research Institute.

5. Some delegations pointed out that the question of the financing of terrorism remained a matter of grave concern. Reference was made, in this regard, to the necessity of combating other related crimes, such as arms smuggling, drug trafficking and money-laundering, which had served to provide financial resources for some terrorist groups.

6. The approach taken by the Security Council, in its resolution 1904 (2009), to apply the obligation to freeze funds and assets to the payment of ransoms to terrorists was also welcomed. The view was expressed that States should ban the payment of ransoms to terrorist groups. References were also made to Security Council resolution 1963 (2010), in which the Council expressed its concern over the increase in incidents of kidnapping and hostage-taking committed by terrorist groups for raising funds or for political gains. The General Assembly was invited to take further appropriate measures in this regard. The point was also made that the Security Council Sanctions Committee should address concerns pertaining to the due process in streamlining its procedures on listing and de-listing.

7. Some delegations expressed their support for the proposal made by Saudi Arabia to establish an international centre, under the auspices of the United Nations, to combat terrorism. Attention was also drawn to research centres established at the regional level focusing on combating terrorism and the need to strengthen collaborative efforts and assistance.

B. Draft comprehensive convention on international terrorism

8. Comments on the draft comprehensive convention on international terrorism were made during the informal consultations held on 11 and 12 April 2011.

9. Delegations reiterated the importance of finalizing the draft comprehensive convention, its conclusion and adoption, preferably by consensus, which would fill legal lacunae and supplement the existing sectoral conventions and thus effectively strengthen the international legal counter-terrorism framework. In this context, several delegations expressed regret that there was still no consensus on the outstanding issues surrounding the draft convention and urged delegations to show utmost flexibility and a constructive spirit in the negotiations. While emphasizing the need for an early conclusion of the draft convention, references were made to other prior calls, whose deadlines had since passed, including the 2005 World Summit Outcome,[a] which had called for the adoption of the convention by the General Assembly during its sixtieth session, as well as to the United Nations Global Counter-Terrorism Strategy,[b] its reviews by the General Assembly,[c] and to

[a] Resolution 60/1.
[b] Resolution 60/288.
[c] Resolutions 62/272 and 64/297.

the statement made by the President of the Security Council on 27 September 2010 (S/PRST/2010/19). It was noted that the United Nations Global Counter-Terrorism Strategy could not be considered complete until the draft convention had been finalized. Some delegations also underlined the need for open and inclusive negotiations that would ensure full transparency in the multilateral process. Several delegations considered that the consolidation in the report of the Working Group of the Sixth Committee (A/C.6/65/L.10) of the text of the draft articles of the convention and the various proposals, which reflected the current state of negotiations, constituted a positive step forward that would facilitate negotiations.

10. Concerning the outstanding issues surrounding the draft convention, several delegations reiterated that the convention should contain a definition of terrorism, which would provide a clear distinction between acts of terrorism covered by the convention and the legitimate struggle of peoples in the exercise of their right to self-determination or under foreign occupation. Some delegations also reiterated their view that the convention should address terrorism in all its forms and manifestations, including State terrorism, and that activities undertaken by the armed forces of States not regulated by international humanitarian law should also fall within its scope. While referring to previous proposals, some delegations considered that it might be necessary to revisit the text of the definition of terrorism contained in draft article 2, in order to appropriately address these issues (see A/60/37, annex III, and A/65/37, annex I, sect. A, para. 11).

11. While some delegations reiterated their preference for earlier proposals relating to draft article 3 (former draft article 18), which they considered to have better addressed their concerns, they remained willing to continue to consider the proposed elements of an overall package presented by the Coordinator in 2007.[d] The point was also made that all groups had still not been able to endorse the 2007 proposal, and this was interpreted as constituting a serious challenge. The view was also expressed that the problems surrounding draft article 3 (former draft article 18) were substantive in nature and would not be resolved through the mere repackaging of the current texts.

12. Several delegations reiterated their support for the Coordinator's 2007 proposal, however, since in their view, it appropriately preserved other international legal regimes, including existing rules of international humanitarian law. They considered that the proposal constituted a legally sound compromise solution. Moreover, some delegations cautioned against revisiting draft articles that had already been thoroughly addressed and which enjoyed general agreement. Some delegations also expressed support for the idea of addressing certain outstanding issues in an accompanying resolution as a way to move the process forward and suggested that work on such a text should commence as soon as possible. In that context, some delegations urged those States that were still not in a position to endorse the Coordinator's 2007 proposal to clarify their concerns so that they could be better addressed, and to propose alternative language. In that connection, questions were raised as to how to move the process forward if the current stalemate could not be overcome, both with regard to the procedural and the substantive framework, and whether States would be prepared to start anew.

[d] A/62/37, annex, para. 14.

13. Notwithstanding a preference for the text proposed by the former Coordinator in 2002 with respect to draft article 3 (former draft article 18), the language of which is reflected in several existing sectoral counter-terrorism conventions, including recently adopted instruments, the willingness to consider the Coordinator's 2007 proposal, without modifications, was expressed if that text would bring negotiations to a successful conclusion. It was also reiterated that any compromise text had to be based on the principle that no cause or grievance could justify terrorism in any form and that activities of the military forces of a State, which were already governed by other legal regimes, should not be covered by the draft convention.

14. On 12 April 2011, in her statement to clarify certain aspects during the informal consultations, the Coordinator, Ms. Maria Telalian (Greece), noting that the negotiations on the draft convention had lasted for more than 10 years, observed that good progress had been made during the past few years on certain important aspects, including the compilation of a consolidated text of the draft articles of the convention during the last session of the Working Group of the Sixth Committee. That text, which, together with the annexes, represented the current stage of consideration, would facilitate discussions and inform decisions on the outstanding issues as it reflected the developments in the negotiations throughout the years.

15. The Coordinator also noted that the 2007 proposal had not yet met with an open objection from any delegation thus far, and she urged delegations to seriously consider whether it could serve as a basis for compromise. Delegations were strongly discouraged from attempting to pick and choose elements from the proposal, which would affect the overall balance that had been sought, as well as the integrity of the text. It was recalled that the 2007 proposal had been carefully drafted following intense negotiations and consultations among delegations.

16. The Coordinator recalled the main concerns raised by delegations during the negotiations, namely: (a) the right of peoples to self-determination under international law; (b) the activities of armed forces in armed conflict; and (c) the activities of military forces of a State in peacetime, also taking into account related concerns about State terrorism. These concerns had been properly addressed in the 2007 proposal in a manner that took into account existing international legal regimes, including international humanitarian law; the draft convention should not aim to either rewrite other fields of international law or to rectify any perceived flaws in these other fields of law. The 2007 proposal was legally sound and politically realistic.

17. The Coordinator further stated that the convention should reflect the principle that the use of force should not be indiscriminate and that civilians would under no circumstances constitute a legitimate target of the use of force, whether during armed conflict or during peacetime. While stressing that the convention was a law enforcement instrument, dealing with individual criminal responsibility, the Coordinator also emphasized that the convention was not indifferent to the obligations of States in this regard. These obligations tracked the provisions of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), 24 October 1970), which the International Court of Justice, in the case concerning *Armed Activities on the*

Territory of the Congo (Democratic Republic of the Congo v. *Uganda)*, has said are declaratory of customary international law.

18. Finally, the Coordinator reiterated that it would be necessary to capture a number of the outstanding issues in an accompanying resolution.

C. Question of convening a high-level conference

19. During the informal consultations on 11 and 12 April, the sponsor delegation of Egypt reiterated its proposal made in 1999 concerning the convening of an international conference, under the auspices of the United Nations, to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The sponsor delegation pointed out that, despite all efforts made at the national, regional and international levels, there was still a dire need to set up an action plan within the United Nations, containing both legal and procedural aspects, which would guarantee active international cooperation to achieve the common aspiration of eliminating terrorism. The proposed conference would aim at adopting an action plan and providing a forum to address all issues related to the fight against terrorism, including the conditions conducive to its spread and a discussion on the definition of terrorism. It was recalled that the proposal had been supported by the Non-Aligned Movement, the Organization of the Islamic Conference, the African Union and the League of Arab States. It was stressed that the issue, although not mutually exclusive, should be discussed on its own merits and should not be linked to the discussions on the draft comprehensive convention.

20. Some delegations expressed support for the proposal, agreeing with the sentiments of the sponsor delegation, in particular that it should be considered without a linkage to the ongoing discussions on the draft comprehensive convention. It was also noted that such a conference could provide an opportunity for taking stock of all efforts made in the area of the fight against terrorism, including addressing its root causes. Attention was also drawn to the suggestion for a two-track approach to finalize the draft convention on the understanding that the proposed conference would definitely be convened (A/C.6/65/L.10, annex III, para. 14). Some other delegations felt that the question of convening a high-level conference should be considered after the completion of the negotiations on the draft comprehensive convention, with the view being expressed that such an approach would provide an excellent opportunity for stocktaking, including identifying needs and available resources for assistance in the implementation of the draft convention.

Annex II

Report on the informal contacts on the draft comprehensive convention on international terrorism

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